



The contingent workforce

Are you aware of the traps to avoid?



Building a better
working world

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Agenda

- ▶ Business context: the use of alternative/contingent workforces
- ▶ Key issues in intragroup workforces
- ▶ Key issues in external workforces
- ▶ Case studies

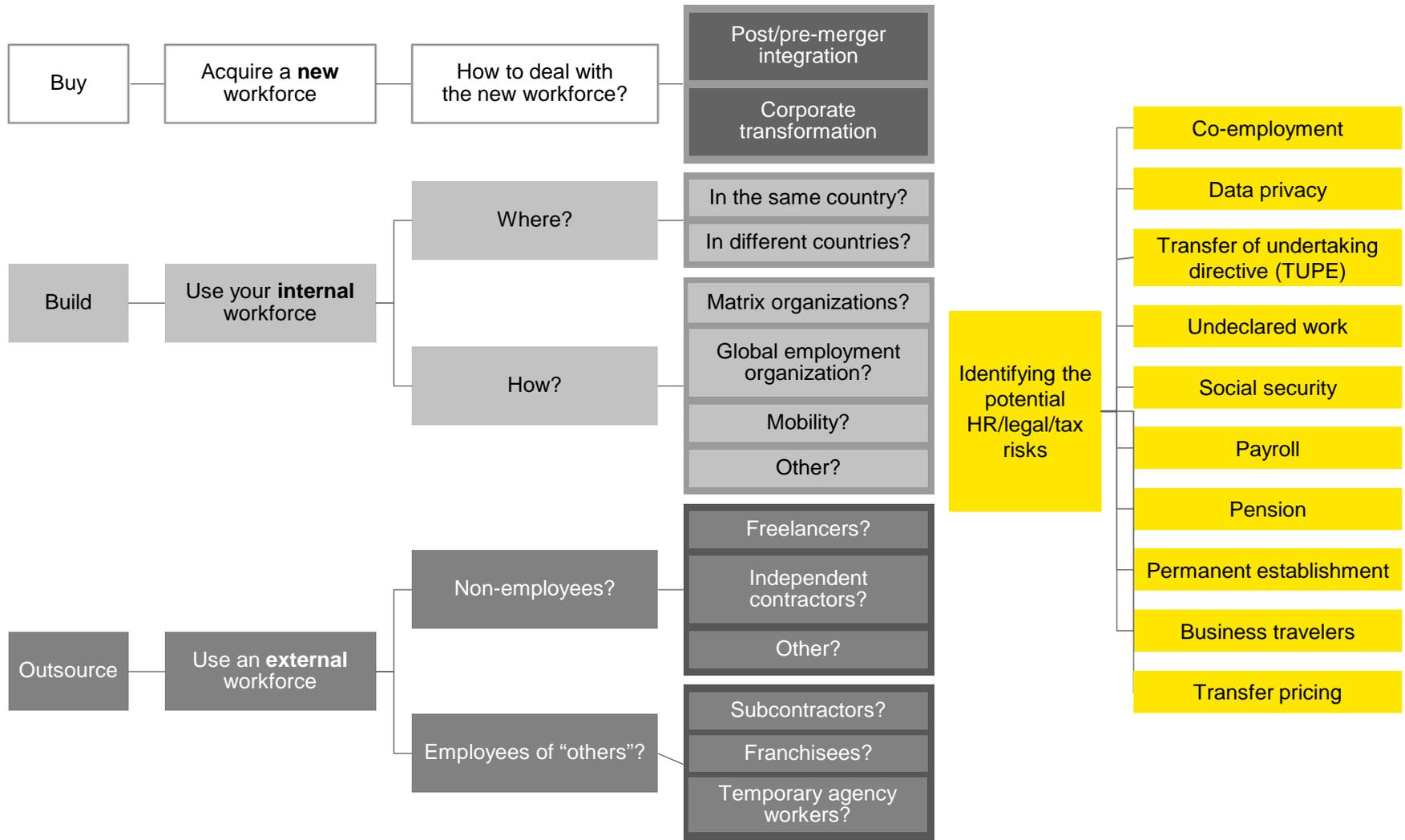
Business context: the evolving use of alternative/contingent workforces



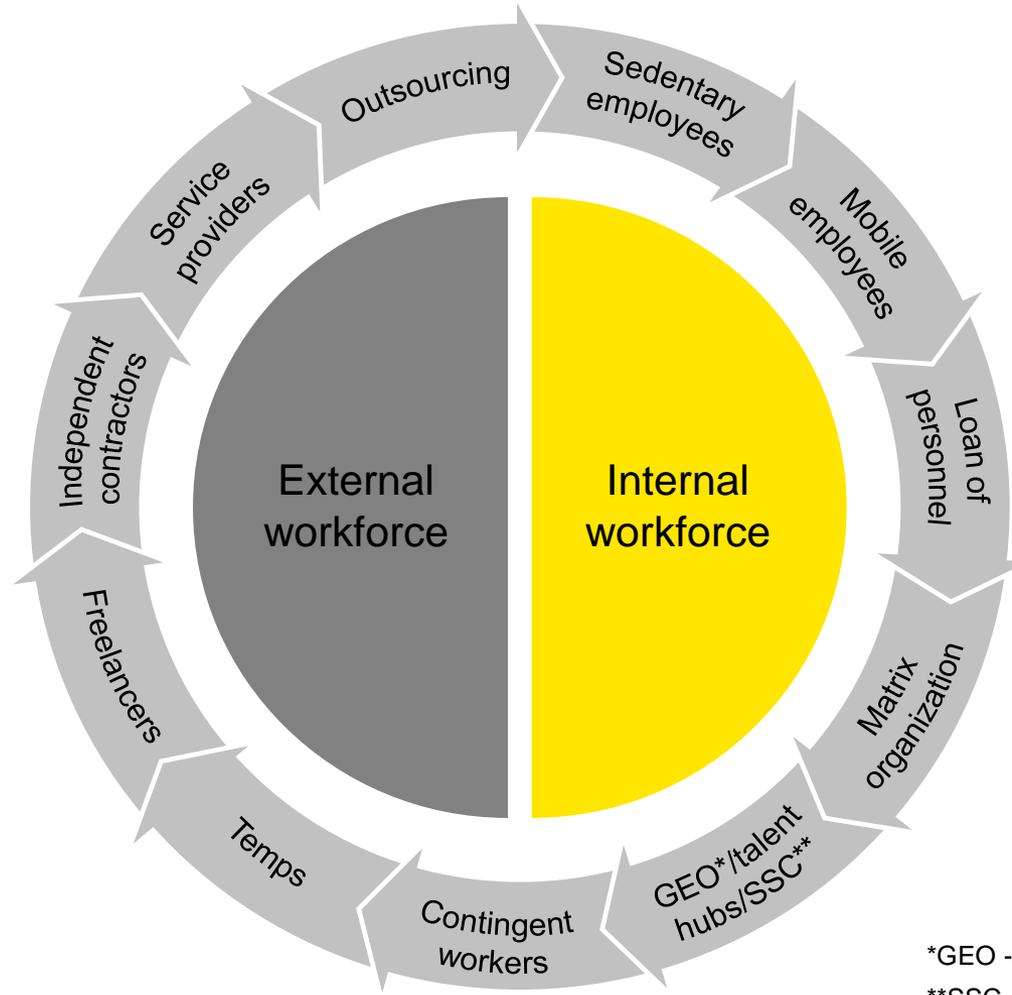
Challenge: evolving use of internal and external workforces

- ▶ In today's ODE (on-demand economy), businesses are now resorting to the use of diverse workforce models across the supply chain.
- ▶ Companies are relying more and more not only on their own workforce to get the job done, but also on the external or contingent workforce.
- ▶ The increasing use of a contingent workforce (often with limited involvement of HR) raises complex HR labor law (and even tax) issues and may expose companies to financial, criminal and reputational risk.
- ▶ HR does not necessarily have a good grasp of the issues/risks relating to the contingent workforce.
- ▶ Today most businesses have not yet implemented policies/processes to ensure compliance with contingent workforce regulations.
- ▶ Awareness of these risks is key to helping ensure that the appropriate compliance tools are put in place in order to avoid unexpected liabilities and costs.

Strategic workforce management: buy, build or outsource



Alternative workforce solutions



*GEO - global employer organization

**SSC - shared service center

Internal or external workforce, that is the question

Benefits of using an external workforce:

Key talent on an as-needed basis

Less management time on performance evaluations/salary discussions

No social security contributions

No employee protection laws

No protection against dismissal

No continued remuneration

Use of his own working equipment

Reduced impact on works council issues

Decreased direct and non-wage labor costs

Business continuity while reducing employee headcount/fixed HR costs

Increased flexibility and competitiveness

Key issues: intragroup workforces



Challenge: localization of business activities in a global environment – substance, key functions and people



*BEPS – base erosion profit sharing

Who is the “employer” in global organizations?

The responsible party is the one who:

- ▶ Procures and makes decisions?
- ▶ Gives orders and instructions?
- ▶ Controls work performance?
- ▶ Deals with HR issues?

▶ The legal entity employing the workforce?

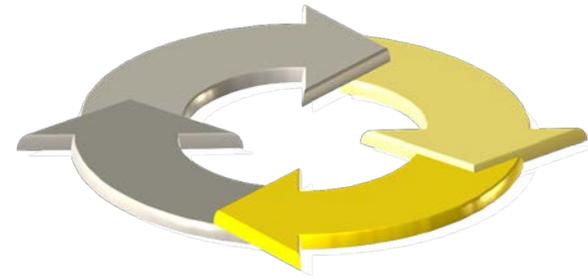
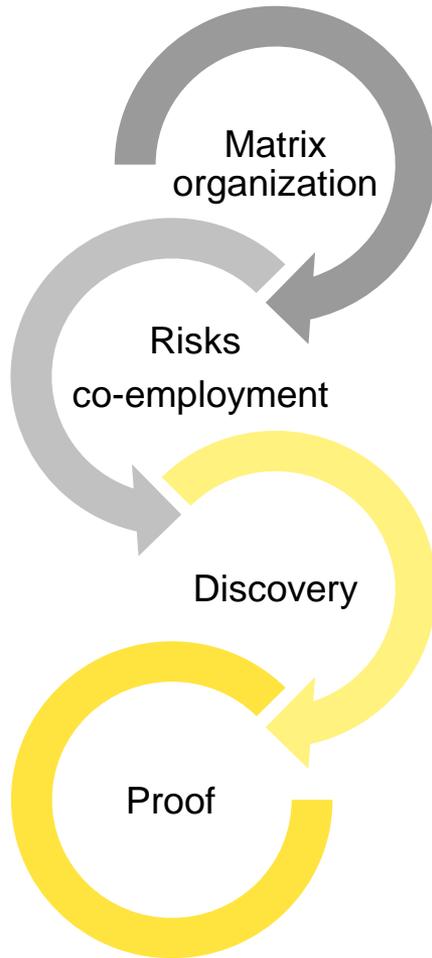
▶ The legal entity using the employee?

▶ Double reporting lines?



Disconnect between the HR/operational organization and the legal entity structures

Challenge: managing increased risk of internationalization of employment disputes



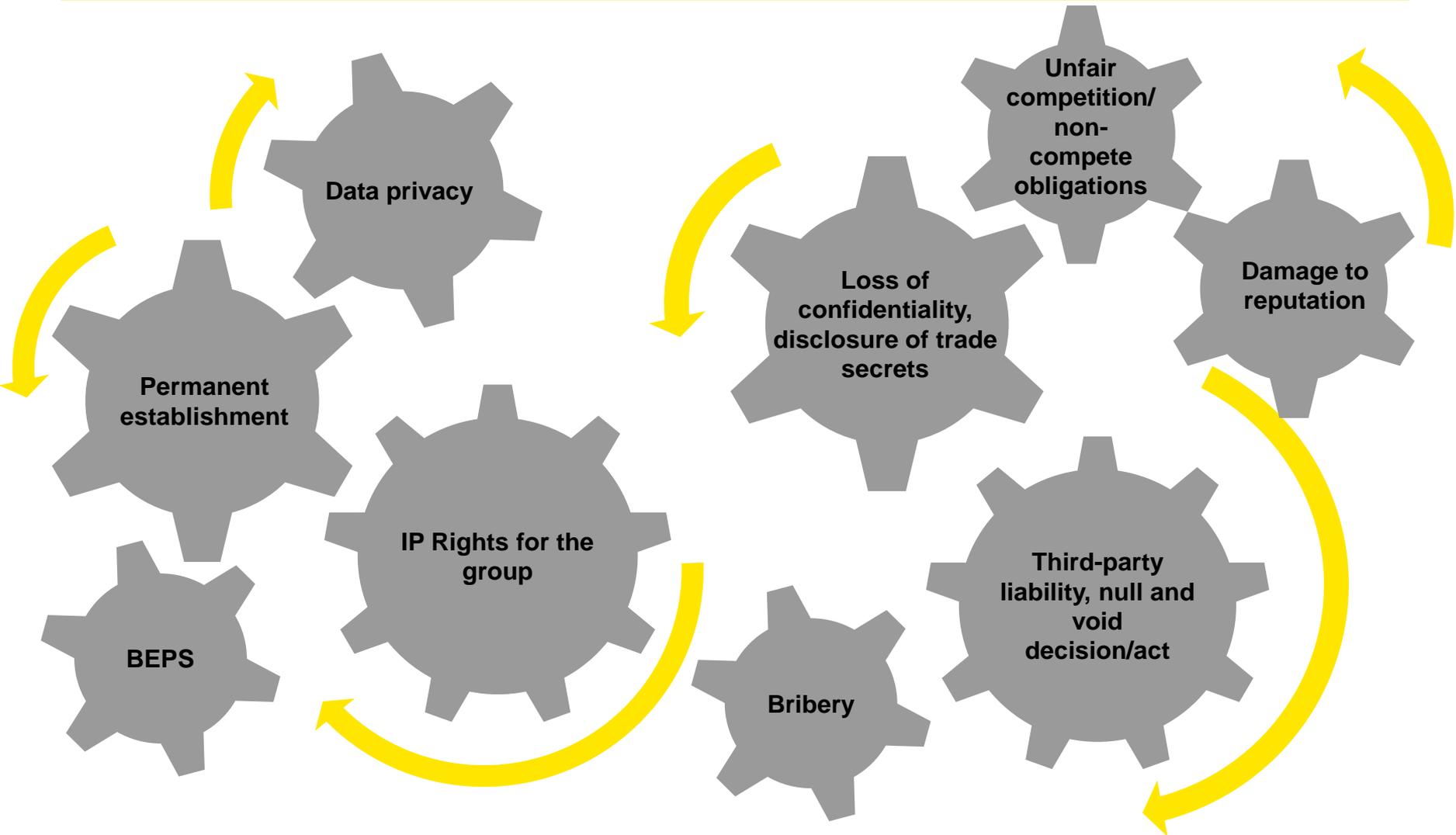
Key issues: external workforces



Key HR-related issues with external workforces ...



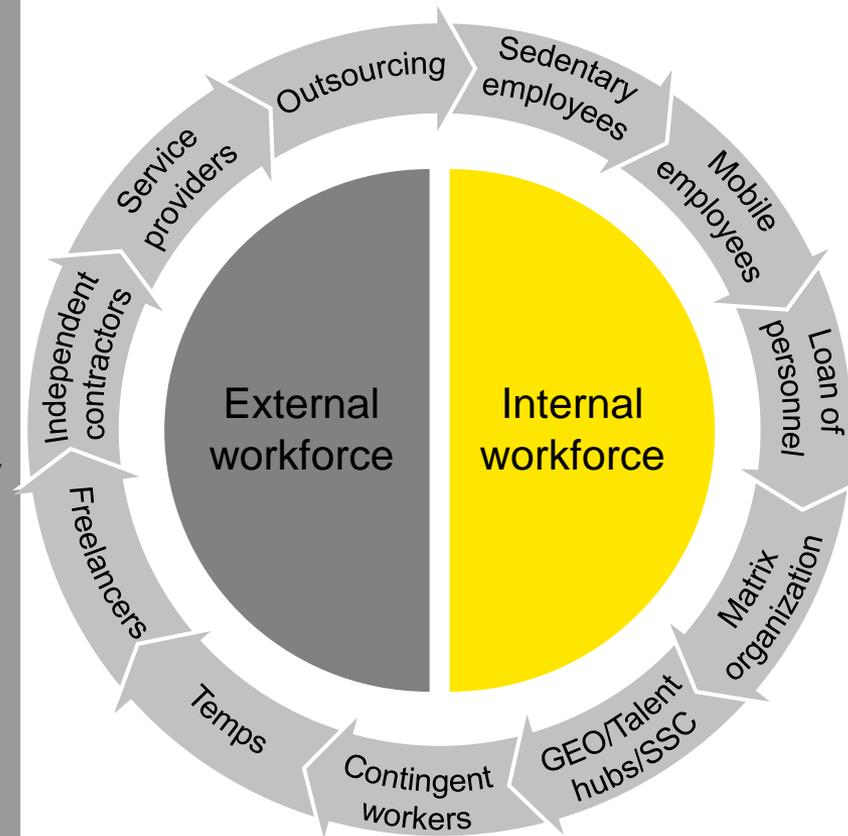
... but not only HR-related issues ...



Buy, build or outsource – solutions and checklist

External workforce solutions

1. Establish an external business partner policy
2. Establish clear rules and guidelines around outsourcing, taking international norms into account
3. Monitor compliance by regular audits of business partners
4. Never instruct the employees of business partners directly
5. Involve HR/legal from the start



Internal workforce solutions

1. Have the right person at the right place to align substance/ assets and function
2. Ensure employment documentation squarely matches tax documentation
3. Avoid co-employment risk, which could compromise the efficiency model
4. Ensure compliance with works council consultations and labor laws in general

Case studies



Case study: intragroup employees

The challenge

Running the group efficiently across the globe through matrix organization model while taking into account IP rights apportionment across the legal entities of the group

What we did

- ▶ Alerted the client of risks relating to co-employer liability
- ▶ Awareness of different types of claims and risks abroad (US)
- ▶ Defense of litigation brought in New Jersey federal court under the Conscientious Employee Protection Act
- ▶ Managed issues relating to discovery in international context

Result

- ▶ Litigation pending
- ▶ Expensive to defend the case (over US\$1M estimated to trial)
- ▶ Lessons learned
- ▶ New approach to minimize HR legal risk
- ▶ Loss of valuable time of executives needed to defend the case

Leading multinational group

Litigation defense

Case study: external workforce audit

The challenge

The client is one of the largest telecom companies in Germany. It required assistance for undertaking a legal review of all relationships with external service providers and supplier of external workforces as well as the respective procurement processes in order to evaluate compliance with employment, tax and social security law.

What we did

- ▶ Conducted interview with process owners to obtain process understanding
- ▶ Implemented an interim procedure to review all existing relationships with external service providers and winding up of unlawful relationships
- ▶ Developed an evaluation, risk map and interview guide to conduct the analysis
- ▶ Involved in interim procurement procedure for external service providers and development of a future procurement operation model

Result

- ▶ Resolution of unlawful relationships with external service providers and reduction of compliance risks
- ▶ Liability exemption for the board members regarding compliance issues
- ▶ Organizational change by the interim procedure to obtain legal compliance
- ▶ Implementation of a new procurement operating model to assure procedures in line with legal requirements
- ▶ Development of an automated tool to support the legal assessment of the relationships with external service providers as part of the new procurement operating model

Leading
telecommunications
company

External workforce review

Questions

